

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE KARAS

-----X  
CRAIG MOSKOWITZ,

Plaintiff,

-against-

KCA FINANCIAL SERVICES, INC., and  
JOHN and JANE DOES 1 – 10,

Defendant(s).  
-----X

Civil Action No.:

09 CIV. 8846  
COMPLAINT

DEMAND FOR JURY TRIAL

FILED  
DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
OCT 19 2009

Plaintiff CRAIG MOSKOWITZ ("Plaintiff" and/or "Moskowitz") by and through her attorneys, M. Harvey Rephen & Associates, P.C., as and for its Complaint against the Defendant KCA FINANCIAL SERVICES, INC. ("KCA") and JOHN and/or JANE DOES 1–10 ("Does") (KCA and Does hereinafter individually and jointly referred to as Defendant(s)"), respectfully sets forth, complains and alleges, upon information and belief, the following:

#### INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his/her own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA"), as well as certain state law claims.

#### PARTIES

2. Plaintiff is a resident of the State of New York, residing at 501 Seven Fields Lane, Brewster, New York 10509.

3. Defendant KCA is corporation with a business address at 628 North Street, Geneva, Illinois 60134.

4. KCA is a "debt collector" as the phrase is defined and used in the FDCPA

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

### **FACTUAL ALLEGATIONS**

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "6" herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, Defendant, on behalf of a third-party Chase Auto Finance (*sic*) ("Chase"), and on a date better known to Defendant, began collecting an alleged consumer debt from the Plaintiff ("Alleged Debt").

9. On or about October 3, 2009, Defendant forwarded to Plaintiff a letter offer a settlement of the Alleged Debt, the settlement monies due no later than October 30, 2008.

9. During on or about October, 2008, Defendant first attempted contact with the Defendant regarding the Alleged Debt, the Defendant placing a phone calls to the Plaintiff ("Defendant's Phone Calls").

10. During the Defendant's Phone Calls, the Defendant, through one of its collectors referred to as Mr. Foley (*sic*), stated that Plaintiff had twenty four hours to acknowledge the Alleged Debt "or else" ("Defendant's First Statement").

11. During the Defendant's Phone Calls, the Defendant, through one of its collectors referred to as Mr. Foley (*sic*), challenged the Plaintiff to "sue" and KCA

(“Defendant’s Second Statement”).

12. On or about October 30, 2008, the Defendant, speaking again with the Plaintiff, stated that the Alleged Debt was in the amount of \$7,000.00, this even though the Defendant knew the Alleged Debt was substantially less (“Defendant’s Third Statement”).

13. During the Defendant’s Phone Calls, the Defendant, through one of its collectors referred to as Mr. Foley (*sic*), stated that if the Alleged Debt wasn’t satisfied by October 30, 2008, then the matter would be forwarded back to Chase (“Defendant’s Fourth Statement”).

14. The Defendant’s First Statement, Defendant’s Second Statement, Defendant’s Third Statement and Defendant’s Fourth Third Statement are collectively hereinafter referred to as “Defendant’s Statements”.

15. During the Defendant’s Phone Calls, the Defendant failed to provide the required disclosures/notices.

16. Despite the Plaintiff’s communicated requests, the Defendant continued its harassing effort to collect the Alleged Debt from the Plaintiff

17. With the culmination of the Defendant’s Statements, the Defendants violated 15 USC §1692e(5), 15 USC §1692e(10), 15 USC §1692e , 15 USC §1692d(5), and/or 15 USC §1692d .

18. As a result of Defendant’s abusive, deceptive and unfair debt collection practices, Plaintiff has been damaged.

**FIRST CAUSE OF ACTION**  
***(Violations of the FDCPA)***

19. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “18” herein with the same force and effect as if the same

were set forth at length herein.

20. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 USC §1692e(5), 15 USC §1692e(10), 15 USC §1692e , 15 USC §1692d(5), and/or 15 USC §1692d .

21. As a result of Defendant's violations of the FDCPA, Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

**DEMAND FOR TRIAL BY JURY**

22. Plaintiff CRAIG MOSKOWITZ hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff CRAIG MOSKOWITZ demands judgment from the Defendants KCA FINANCIAL SERVICES, INC. and JOHN and/or JANE DOES 1–10 as follows:

- A. For actual damages provided and pursuant to 15 USC §1692k(a)(1);
- B. For statutory damages provided and pursuant to 15 USC §1692k(2)(A);
- C. For attorneys' fees and costs provided and pursuant to 15 USC §1692k(a)(3);
- D. A declaration that the Defendant's practices violated the FDCPA; and,
- E. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York  
October 2, 2009

Respectfully submitted,

By: 

M. Harvey Rephen, Esq. (MR3384)  
M. HARVEY REPHEN & ASSOCIATES, P.C.  
708 Third Avenue, 6<sup>th</sup> Floor  
New York, New York 10017  
Phone: (212) 796-0930  
Facsimile: (866) 832-8600

*Attorneys for the Plaintiff CRAIG MOSKOWITZ*

To: KCA FINANCIAL SERVICES, INC.  
628 North Street  
Geneva, Illinois 60134  
*(Via Prescribed Service)*

Clerk,  
United States District Court, Southern District of New York  
*(For Filing Purposes)*